IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

WP(C).No. 24168 of 2007(B)

OS.28/2001 of III ADDL.SUB COURT, ERNAKULAM
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PETITIONER:

M.M. WAHEEDA, AGED 38,
W/O. M.K. RAJAN, RESIDING AT XLI/1252, PULLEPPADY,
KOCHI-35, KARITHALA DESOM, ERNAKULAM VILLAGE,
KANAYANNUR TALUK.

BY ADV. SRI.R.LAKSHMI NARAYAN
SMT.R.RANJINI

RESPONDENT:

V.E. SIRAJ, S/O. VALIYAVEETTIL ISMAIL,
RESIDING AT ISHAKKUTTY VILLA, AYAPPANKAVU,
THRIKKANARVATTOM DESOM, ERNAKULAM VILLAGE,
KANAYANNUR TALUK, KOCHI-18.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

WP(C).No. 24168 OF 2007 B

Dated this the 10th August, 2007.

JUDGMENT

The writ petition is preferred against the order of the Subordinate Judge, Ernakulam in O.S.28/01. The orders under challenge are: (i) against refusal to summon document and (ii) refusal to direct the respondents in the I.A. to answer interrogatories. The suit is one for specific performance of a contract and according to the plaintiff the defendant had entered into an agreement to sell with the plaintiff with respect to 7 1/4 cents of property with a two storied building for a consideration of Rs.12 lakhs out of which Rs.10 lakhs has been paid as advance. On the other hand the defendant would contend that there has been no agreement to sell at all and the whole agreement is a fabricated one and therefore the plaintiff is not entitled to any relief in the suit. The defendant wanted the plaintiff to produce documents relating to the financial business of his firm for the years 1998 to 2001 and also wanted him to answer certain interrogatories in order to establish that the defendant's husband was a close friend of one Sajan Varghese. According to the court below what is attempted to be proved is the transaction between the finance company of the plaintiff and Mr.Sajan Varghese.

There is no case for the defendant that herself or husband had any dealings with the finance company of the plaintiff. The court below also found that the interrogatories to be answered by the plaintiff was also in relation to the finance company of the plaintiff which has no relevance with regard to the dispute involved in the case. In a suit for specific performance of a contract matters to be proved are regarding the existence of an agreement between the plaintiff and the defendant and the readiness and willingness of the plaintiff to perform his part of the contract. The burden is squarely on the plaintiff to establish both these factors especially when the defendant denies the execution of the document itself. The burden squarely lies on the plaintiff to prove the existence of a valid agreement between the plaintiff and the defendant. The documents sought to be produced and the interrogatories sought to be answered are with respect to the financial dealings of a firm conducted by the plaintiff. Whatever it may be, in a suit of this nature, it may not have much significance because what is to be proved is the execution of the agreement, the burden of which heavily relies on the plaintiff. There is no point in attempting to get documents to connect with Sajan Varghese etc. and it will only add confusion and therefore the court below has

rightly dealt with the matter and refused to entertain the applications. Therefore, I do not find any merit in the writ petition and the same is dismissed.

M.N.KRISHNAN
Judge

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